

EXHIBIT “1”



CORPORATION SERVICE COMPANY®

Notice of Service of Process

null / ALL
Transmittal Number: 16506944
Date Processed: 04/14/2017

Primary Contact: Jeffrey McCabe
Ocwen Financial Corporation
1661 Worthington Road
Suite 100
West Palm Beach, FL 33409

Entity: Ocwen Loan Servicing, LLC
Entity ID Number 2122003

Entity Served: Ocwen Loan Servicing, LLC

Title of Action: Phyllis Sandigo vs. Ocwen Loan Servicing, LLC

Document(s) Type: Summons/Complaint

Nature of Action: Contract

Court/Agency: Santa Clara County Superior Court, California

Case/Reference No: 17CV308431

Jurisdiction Served: California

Date Served on CSC: 04/12/2017

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: William E. Kennedy
408-241-1000

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To avoid potential delay, please do not send your response to CSC
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscglobal.com

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Ocwen Loan Servicing, LLC, U.S. Bank National Association, As
Trustee for GSAA Home Equity Trust 2007-3, Asset-Backed Certificates

YOU ARE BEING SUED BY PLAINTIFF: Series 2007-3 and Does 1-100
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Phyllis Sandigo

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
(ENDORSED)

FILED

APR 11 2017

Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

Chavez

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Clara County Superior Court
191 North First Street
San Jose, CA 95131

CASE NUMBER:
(Número del Caso):

70V808481

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
William E. Kennedy, 2797 Park Ave. Suite 201, Santa Clara, CA 95050 (408) 241-1000

DATE: April 11, 2017
(Fecha)

APR 11 2017

Clerk, by
(Secretario)

Chavez

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]


NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Ocwen Loan Servicing, LLC
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): Limited Liability Corporation
4. ☐ by personal delivery on (date):

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Attorneys for Plaintiff PHYLLIS SANDIGO

(ENDORSED)
FILED
APR 11 2017
Clerk of the Court
Superior Court of CA County of Santa Clara
BY  DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

17CV308431

Phyllis Sandigo,
Plaintiff,
v.

Ocwen Loan Servicing, LLC and U.S. Bank
National Association, as Trustee for GSAA
Home Equity Trust 2007-3, Asset Backed
Certificates, Series 2007-3 and Does 1-100,
Defendants.

COMPLAINT

1. Homeowner's Bill of Rights, Civil Code § 2920 *et seq.*
2. Violation of the Rosenthal Act, Civil Code § 1788 *et seq.*;
3. Violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 *et seq.*;
4. Conversion;
5. Violation of the Consumer Credit Reporting Agencies Act, Civil Code § 1785.1 *et seq.*;
6. Violation of the Unfair Competition Law, Business and Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. Ms. Sandigo is a senior and a widow, living on a fixed income. She has owned and lived in her home for over 40 years. In June 2016, Ocwen sprung on Ms. Sandigo a letter falsely stating that she was past due over \$6,000 on her mortgage loan, when in fact Ms. Sandigo

1 was current on her loan and had been for years. Ocwen would spend the next ten months on a
2 relentless and unlawful collection campaign -- harassing her with constant collection calls
3 (ignoring her repeated requests to cease), sending collection letters, falsely reporting damaging
4 information on her credit report, and threatening to foreclose on her home. Despite Ms.
5 Sandigo's repeated telephone calls to resolve the problem, Ocwen robotically rejected her
6 disputes, continued to demand payment, and falsely stated she was past due. In response to Ms.
7 Sandigo's numerous dispute letters, Ocwen responded with confusing non-responses, and
8 inaccurate information concerning the reasons Ocwen contended Ms. Sandigo was in default. In
9 March 2017, Ocwen followed through on its threats of foreclosure by recording a Notice of
10 Default with Santa Clara County (starting the foreclosure clock running on when Ocwen can sell
11 Ms. Sandigo's home at auction). That same month, Ocwen sent Ms. Sandigo, in just one day
12 alone, over fifty (50) foreclosure notices; when stacked on a table, the foreclosure notices are
13 almost six inches thick.

14 2. As a result of Defendants' unlawful acts and omissions, Ms. Sandigo has suffered
15 and continues to suffer significant emotional distress including bouts of crying, physical
16 shaking, nausea, nervousness, sleep problems (requiring valium and trazadone), stress, loss of
17 appetite, weight loss, paranoid, humiliation, loss of enjoyment in life, anger, loss of
18 concentration at home, fear of losing her home, hopelessness, frustration, anxiety, among other
19 negative emotions. The telephone conversations with Ocwen personnel were disturbing to the
20 point that Ms. Sandigo was often left physically shaking, and at times crying after they were
21 over.

22 3. Ms. Sandigo is a senior citizen, as that term is defined by Civil Code § 1761.
23 Ocwen knew that their conduct was directed at a senior citizen. A widow and a senior citizen,
24 Ms. Sandigo is substantially more vulnerable than other members of the public to Ocwen's
25 conduct because of her status, and actually suffered substantial emotional and economic
26 damages from Defendants.

27 4. Defendants have a history, business plan, or practice of unlawfully servicing
28 mortgage loans and unlawful collection practices similar to herein.

1 5. Defendants' conduct is reckless and with a conscious disregard for the rights of
2 Ms. Sandigo, particularly after receiving repeated pleas from Ms. Sandigo to cease the collection
3 campaign because she was current on her payments.

4 **II. PARTIES**

5 6. Plaintiff Phyllis Sandigo is an individual and at all relevant times herein was a
6 resident of Santa Clara County, California. Ms. Sandigo is a senior citizen as that term is
7 defined by Civil Code §1761.

8 7. Defendant Ocwen Loan Servicing, LLC ("Ocwen"), the current servicer of Ms.
9 Sandigo's mortgage loan, is primarily engaged in the business of mortgage servicing.

10 8. Defendant U.S. Bank U.S. Bank National Association, as Trustee for GSAA
11 Home Equity Trust 2007-3, Asset-Backed Certificates, Series 2007-3 ("U.S. Bank") is the
12 trustee for the investor on the loan and owner of the note secured by Ms. Sandigo's home, and is
13 a national banking association organized under the laws of the United States.

14 9. Ms. Sandigo alleges that at all times herein mentioned, each of the Defendants
15 was, and is now, the agent, servant, employee and/or other representative of the other
16 Defendants. In doing the things herein alleged, Defendants were acting in the scope, purpose
17 and authority of such agency, service of employment, and/or other representative capacity with
18 the permission, knowledge, consent, and ratification of the other Defendants.

19 10. Plaintiff is ignorant of the names and capacity of Defendants herein sued as Does
20 1-100, and therefore sues these Defendants by such fictitious names. When the true names and
21 capacities of these Defendants becomes known, Plaintiff will amend this Complaint to include
22 their true names and capacities and, if necessary, will seek leave to amend to add additional
23 allegations against them. Plaintiff is informed and believes, and so alleges, that each of the
24 fictitiously named Defendants is responsible in some manner for the occurrences alleged in the
25 Complaint, and that Plaintiff's damages were proximately caused by their conduct.

26 **III. VENUE AND JURISDICTION**

27 11. Defendants, and each of them, are subject to the jurisdiction of Santa Clara
28 County Superior Court of the State of California by virtue of their business dealings and

1 transactions in California, and by causing injurious effects in California by their acts or
2 omissions.

3 12. Venue is proper in this Court because the property and transactions at issue
4 occurred in Santa Clara County.

5 **IV. FACTUAL SUMMARY**

6 13. Plaintiff incorporates and realleges all of the preceding allegations as though fully
7 set forth here.

8 14. The fundamental reason why Ms. Sandigo has found herself victim of Ocwen's
9 unlawful and abusive debt collection practices (including its ongoing attempt to foreclose on her
10 home) is that Ocwen is wrongfully attempting to collect money for escrow regarding property
11 tax payments for a three-year period despite the fact that Ocwen paid no property tax, and Ms.
12 Sandigo and her late husband made such property tax payments directly to Santa Clara County.

13 15. From 2013 to 2016, Ocwen never requested Ms. Sandigo to make monthly
14 payments in an amount which included escrow for property tax payments. But in 2016, Ocwen
15 suddenly, and without any explanation, falsely claimed that such higher payments should have
16 been made. Ms. Sandigo spent hours disputing the matter with Ocwen during numerous
17 telephone conversations, as well as in written correspondence. Ocwen repeatedly rejected Ms.
18 Sandigo's pleas and didn't appear to listen to anything Ms. Sandigo said.

19 16. Instead of fixing the problem, Ocwen continues to engage in a relentless
20 campaign of unlawful collection harassment in an attempt to collect more than \$6,000 (going on
21 now for more than ten (10) months). This collection campaign consists of constant collection
22 calls, collection letters, false reporting of past due balances and delinquencies to national credit
23 reporting agencies, and initiating a foreclosure to sell Ms. Sandigo's home.

24 **V. FACTUAL ALLEGATIONS**

25 17. Plaintiff incorporates and realleges all of the preceding allegations as though fully
26 set forth here.

27 18. Plaintiff, Phyllis Sandigo lives at 3577 Lynx Drive in San Jose, California.

28 19. Ms. Sandigo and her late husband Joseph Sandigo purchased their home, at the

1 time in a newly developed neighborhood, in 1976 and raised their family there.

2 20. In September 2011, the Sandigos filed a Chapter 13 bankruptcy, which Ms.
3 Sandigo successfully completed in November 2016. In 2014, Mr. Sandigo passed away. The
4 mortgage was current, and it was not included in the bankruptcy. The Sandigos continued to
5 make timely monthly payments directly to Ocwen during the bankruptcy.

6 21. In January 2012, the Sandigo's loan was modified. The modification calls for a
7 fixed principal and interest payment of \$1,325.79 for the duration of the loan. At the end of the
8 loan, a balloon payment is due.

9 22. The crux of this matter concerns the escrow portion of the monthly payment on
10 Ms. Sandigo's loan. There are two escrow items, which at times, have been added to the
11 principal and interest portion of the payment (\$1,325.79) to raise the total monthly payment due.
12 The first is for the payment of hazard insurance (i.e. homeowner's insurance). The cost of the
13 escrow payment for hazard insurance has varied somewhat, but has remained approximately
14 \$89.42 per month. The Sandigos have at all times made payments which included the hazard
15 insurance escrow amount, and there is no known dispute concerning these amounts. Thus, the
16 regular monthly payment due to Ocwen has always been at least \$1,415.21 (\$1,325.79 +
17 \$89.42).

18 23. The second escrow item is for property tax. This is the escrow item which is at
19 the center of Ocwen's cascade of errors and wrongful collections. The cost of the escrow
20 payment for property tax has been approximately \$182.35. When Ocwen included this escrow
21 item in the payment, it brought the payment to approximately \$1,597.56. (\$1,325.79 + \$89.42 +
22 \$182.35).

23 24. In early 2012, when the loan was modified, it was agreed that their account would
24 be escrowed for property tax, as well as hazard insurance for one year. Accordingly, in 2012
25 and early 2013, Ocwen required payment of approximately \$1,597.56, which the Sandigos paid
26 without dispute.

27 25. In early 2013, the Sandigos requested that their account be de-escrowed for
28 property tax. Ocwen did so. Accordingly, beginning in June 2013, Ocwen began sending the

1 Sandigos billing statements for a lower monthly payment of approximately \$1,415.21, thus
2 reflecting the fact that the account had been de-escrowed for property tax.

3 26. Ocwen made no payment of property tax after March 22, 2013. The Sandigos
4 have made all property tax payments due directly to Santa Clara County after March 2013. The
5 Sandigos continued to make the de-escrowed payment of approximately \$1,415.21 from June
6 2013 through June 2016.

7
8 **Ocwen Unlawfully Attempts to Collect \$6,266.55, Falsely Stating Ms. Sandigo is
Delinquent and Past Due**

9 27. On May 24, 2016, after Ms. Sandigo had been making payments of
10 approximately \$1,415.21 for three years, which Ocwen accepted without issue, defendant U.S.
11 Bank (trustee for the loan's investor) filed a document in bankruptcy court stating that Ms.
12 Sandigo was \$6,266.55 past due on her mortgage. U.S. Bank attached a payment history which
13 indicated that U.S. Bank contended that the Sandigos had been required to make a payment of
14 \$1,597.56 (not \$1,415.21) from June 1, 2013 to April 2016.

15 28. Ms. Sandigo regularly made her monthly payments through Ocwen's online
16 system. In July 2016, Ocwen, following U.S. Bank's actions, Ocwen suddenly and without
17 explanation, began requiring Ms. Sandigo to make payments of \$1,597.56 instead of the
18 \$1,415.21, which she had been paying up until that point. Ocwen's system no longer would
19 accept payments of \$1,415.21. Ms. Sandigo called Ocwen to dispute the higher payment
20 required. Ocwen insisted that she make the \$1,597.56 payment. Ms. Sandigo had no choice but
21 to pay. Ms. Sandigo was charged \$19.50 to make the payment, as a result of Ocwen's surcharge
22 on such telephonic payments, which it refers to as "Speedpay."

23
24 **Ocwen Rejects Ms. Sandigo's Oral Pleas, and Unlawfully Attempts to Collect Over \$6,000
Not Owed**

25 29. After these events, Ms. Sandigo began a long series of communications with
26 Ocwen to dispute Ocwen's handling of her account.

27 30. Ms. Sandigo spoke to numerous individuals. None of these individuals fixed the
28 problem. Ms. Sandigo was forced to explain the problem over and over to each of the different

1 individuals. Ms. Sandigo felt Ocwen was never really listening to her when she would try to
2 explain and get Ocwen to fix the problem. Despite her explanations, Ocwen continued to falsely
3 state she was behind on payments and demanded that she pay. At various times, Ocwen falsely
4 stated that Ms. Sandigo missed payments, or that her payments in the past had not been in a
5 sufficient amount. These conversations were emotionally upsetting to Ms. Sandigo and often
6 left her physically shaking.

7 31. During other phone calls with Ocwen, Ms. Sandigo was often put on hold for
8 long periods of time. Other times, she was told that someone would call her back, but no one
9 called.

10 **Ocwen's Representative Presanth Gives Conflicting Explanations and Does Not Fix the**
11 **Problem**

12 32. Ms. Sandigo was eventually put in touch with a representative named Presanth
13 who offered a variety of explanations for Ocwen's conduct.

14 33. In one conversation with Ms. Sandigo, Presanth falsely stated that Ocwen had
15 paid Ms. Sandigo's property taxes, which was the reason her payment had increased. In fact, as
16 alleged above, Ms. Sandigo paid all property taxes due on the property after March 22, 2013.

17 34. In another conversation, Presanth stated that Ocwen had not received a number
18 of her monthly payments. Specifically, Presanth falsely stated that Ocwen had not received
19 payments in April 2013, May 2014, September 2014, and November 2015.

20 35. Ms. Sandigo located her Wells Fargo bank statements, which showed that she in
21 fact had made payments during those months. Ms. Sandigo sent the bank statements to
22 Presanth. Even this was an ordeal, Ms. Sandigo emailed the statements to the email address
23 Presanth had provided. Ocwen's email system acknowledged receipt of the email, but directed
24 Ms. Sandigo to email it to other email addresses. These addresses did not work, as Presanth said
25 that he did not receive such emails. Ultimately, he told Ms. Sandigo to "efax" the documents,
26 which required the opening of an efax account. By this means, Ms. Sandigo was finally able to
27 get the documents to Presanth.

28 36. During subsequent conversations with Presanth, he admitted that Ocwen had in

1 fact received all payments. However, Presanth would still not acknowledge that Ms. Sandigo
2 had wrongly been placed in default, stating that he still needed to check with Ocwen's
3 bankruptcy department.

4 37. In Ms. Sandigo's last telephone call with Presanth, he told Ms. Sandigo that her
5 monthly payment had been increased during her bankruptcy, but that Ocwen had not been
6 allowed to notify her that this had occurred. Presanth reiterated that Ms. Sandigo was in default
7 and that there was nothing more that he would do.

8
9 **Ocwen Dismisses Ms. Sandigo's Written Dispute Letters, and Continues to Unlawfully
Collect Over \$6,000 and Rejects Ms. Sandigo's Payments**

10 38. Ms. Sandigo also submitted written disputes to Ocwen.

11 39. For example, on July 26, 2016, Ms. Sandigo faxed a letter to Ocwen's Research
12 Department at fax number 407-737-6375. Ms. Sandigo's July 26, 2016 letter disputed Ocwen's
13 increase of her monthly payment to \$1,597.56, and also submitted proof that she made two
14 payments, which an Ocwen representative had falsely claimed that she had not made.

15 40. The Research Department is the department at Ocwen, which handles Qualified
16 Written Requests/Notices of Error pursuant to RESPA.

17 41. On August 4, 2016, Ocwen sent a response to the July 26, 2016 letter. The
18 response letter acknowledged that the two payments for which Ms. Sandigo had submitted proof
19 had been received and applied, but otherwise took no action to resolve the problem, or explain
20 why Ms. Sandigo's dispute concerning the increase in her payment amount was not valid.
21 Ocwen incorrectly interpreted the dispute letter to include a complaint about the due date on the
22 loan, which was not even addressed in Ms. Sandigo's July 26 letter. Ocwen would continue its
23 unlawful collection campaign.

24 42. On November 2, 2016, Ms. Sandigo faxed another dispute letter to Ocwen's
25 Research Department at 407-737-6375. The letter responded to false statements made by Ocwen
26 personnel over the telephone that Ocwen had raised her monthly payment because Ocwen had
27 paid Ms. Sandigo's property taxes on her behalf. Ms. Sandigo provided proof that she had made
28 the property tax payments herself for the last few years. Ms. Sandigo again asked Ocwen to

1 reduce her payment to \$1,415.21.

2 43. On November 28, 2016, Ocwen sent Ms. Sandigo a letter in which it stated that it
3 had de-escrowed Ms. Sandigo's account for property taxes prospectively, and stated that Ms.
4 Sandigo's payment would be reduced to \$1,416.37 starting in February 2017. However, Ocwen
5 continued its unlawful collection campaign unabated.

6 44. On December 8, 2016, Ocwen sent correspondence to Ms. Sandigo which
7 admitted that "we have not disbursed any funds toward the county tax since 03/22/2013."

8 45. Neither Ocwen's November 28, 2016 letter nor its December 8, 2016 letter
9 addressed the larger issue, i.e. Ocwen retroactively charging \$1,597.56 per month during time
10 periods when Ocwen paid no property tax, resulting in Ms. Sandigo's account being placed in
11 default, and triggering the abusive and harassing collection campaign.

12 46. Then, things got even worse. Beginning in December 2016, Ocwen refused to
13 allow Ms. Sandigo to make her monthly payments. Ms. Sandigo mailed payments to Ocwen but
14 Ocwen rejected them, and returned them to Ms. Sandigo.

15 47. On December 26, 2016, Ms. Sandigo also sent a letter to Ocwen at the address
16 designated by Ocwen to receive Notices of Errors (sometimes known as Qualified Written
17 Requests) under the Real Estate Settlement Procedures Act ("RESPA"). In response to Ocwen's
18 representative, Presanth's earlier statement (that the reason Ocwen considered her to be in
19 default was that it contended that she had not made several payments), she provided her Wells
20 Fargo bank statements for four years, (from January 2013 through November 2016), and made
21 notations on the Wells Fargo statements showing each payment during that time period. Ms.
22 Sandigo received no written acknowledgement or response to the December 26, 2016 letter,
23 despite that fact that RESPA required Ocwen to respond.

24
25 **Ocwen Continues Making Collection Calls (Despite Ms. Sandigo's Repeated Requests to Cease)**

26 48. Ms. Sandigo also received a large number of collection calls from Ocwen
27 demanding payment. These calls would range from morning until the afternoon, multiple times
28 per week.

49. She would attempt to explain that she was making payments each month as required and that she paid her own property taxes, yet the callers would nonetheless demand payment. Ms. Sandigo repeatedly told Ocwen to fix the problem, and to stop calling and harassing her, yet the phone calls persisted. Many collectors seemed to have no knowledge of the previous calls or even that Ms. Sandigo disputed the default status of the loan.

Ocwen Continues Sending Collection Letters, Assessing Fees and Conducting Home Inspections

50. Ocwen also sent a number of collection letters to Ms. Sandigo falsely stating that she was in serious default. The letters did not address or acknowledge Ms. Sandigo's many disputes.

51. Some collection letters confusingly stated that Ms. Sandigo had not made payments in months when she clearly had made payments. For example, a December 1, 2016 letter stated "We have not received your 08/01/2016 through 12/01/2016 mortgage payment(s)." In fact, Ms. Sandigo made payments in August, September, October, and November 2016. (Ocwen would not allow Ms. Sandigo to make a payment in December 2016.)

52. In February 2017, Ocwen's monthly statement listed a total amount due of \$355,635.91.

53. Ocwen sent a "Delinquency Notice" dated March 2, 2017 falsely stating that Ms. Sandigo was 213 days delinquent on her mortgage loan and stating "Failure to bring your loan current may result in fees and foreclosure – the loss of your home."

54. During its collection campaign, Ocwen conducted inspections of Ms. Sandigo's home on a regular basis and assessed an illegal fee for each inspection. Ocwen also assessed a number of late charges based on the incorrect position that Ms. Sandigo was behind on her payments.

Ocwen Continues to Report False, Incomplete and Damaging Information on Ms. Sandigo's Credit Report to National Credit Reporting Agencies

55. Ms. Sandigo's December 2016 Equifax credit report shows that she owed "amounts past due" in 2015 and 2016, when she was current on her mortgage. For example, in

1 June and July 2016, Ocwen reported an amount past due of \$6,111.00. Ms. Sandigo also sent a
 2 copy of the December 26, 2017 letter to Equifax, to dispute the credit reporting, but received no
 3 response.

4 56. Ocwen never even bothered to report to the credit reporting agencies that Ms.
 5 Sandigo was disputing that she was past due or delinquent.

6
 7 **Ocwen Follows Through on its Unlawful Threats and Initiates a Foreclosure**

8 57. On March 3, 2017, the Santa Clara County District Attorney's office sent a letter
 9 to Ms. Sandigo advising her that a Notice of Default had been recorded against her home, and
 10 that her home was in foreclosure.

11 58. On or about March 13, 2017, fifty-four (54) copies of a Notice of Default were
 12 delivered to Ms. Sandigo's home, indicating that Ocwen commenced the foreclosure process.

13 59. The entire episode, including the prospect of losing her home, has caused and
 14 continues to cause Ms. Sandigo significant emotional stress and physical symptoms, as
 15 described above.

16
 17 **VI. LEGAL CLAIMS**

18
 19 **FIRST CAUSE OF ACTION**

20 **Violation of the California Homeowner Bill of Rights**
California Civil Code § 2924.11 – Against Ocwen and U.S. Bank
California Civil Code § 2924.17 – Against Ocwen

21
 22 60. Plaintiff incorporates and realleges all of the preceding allegations as though fully
 23 set forth here.

24 61. The loan at issue is secured by a first lien deed of trust against Ms. Sandigo's
 25 principal residence, which is a single-family house and used only for personal, family, and
 26 household purposes.

27 62. Defendant Ocwen is a "mortgage servicer" as defined by Cal. Civil Code §
 28 2920.5.

63. On information and belief, Ocwen is not an entity described in Cal. Civil Code § 2924.18(b) because, among other reasons, it foreclosed on more than 175 residential real properties during the immediately preceding annual reporting period.

64. Ms. Sandigo is a “borrower” as defined by Cal. Civil Code § 2920.5.

65. As of March 2017, Ms. Sandigo was in compliance with the loan modification.

66. Civil Code § 2924.11(c)(1) provides that if a foreclosure prevention alternative, such as a modification, is approved in writing and the borrower is in compliance with the loan modification, the servicer “shall not record a notice of default.”

67. Ocwen and U.S. Bank violated § 2924.11(c)(1) by recording a Notice of Default even though Ms. Sandigo was fully in compliance with the permanent loan modification.

68. Civil Code § 2924.17 requires that foreclosure documents, including a Notice of Default, recorded by or on behalf of a mortgage servicer be accurate, complete, and supported by competent and reliable evidence. The servicer must ensure that it has competent and reliable evidence to substantiate the borrower’s default and right to foreclose, including the borrower’s loan status and loan information, before recording foreclosure documents.

69. Ocwen violated Civil Code § 2924.17 when it recorded, or had its agent record, the March 2017 Notice of Default, despite being on notice multiple times that Ms. Sandigo fully complied with the loan modification.

70. Pursuant to Civil Code § 2924.12, Ms. Sandigo is entitled to an injunction to address material violations of sections 2924.11 and 2924.17. She seeks an injunction which prevents the sale of her home, and requires Ocwen and U.S. Bank to rescind the Notice of Default and comply with the loan modification. Ms. Sandigo also seeks attorney’s fees and costs.

SECOND CAUSE OF ACTION

Violation of the Rosenthal Act, Cal. Civil Code §§ 1788, *et seq* Against Ocwen

71. Plaintiff incorporates and realleges all of the preceding allegations as though fully set forth here.

72. Ocwen is a “debt collector” within the meaning of Civil Code § 1788.2(c).

1 73. The monies allegedly owed by Plaintiff is a "debt" within the meaning of Civil
2 Code § 1788.2(d), and a "consumer debt" within the meaning of Civil Code § 1788.2(f).

3 74. Ocwen's acts and omissions, and its entire course of conduct, as more fully
4 described above, constitute numerous violations of the Rosenthal Fair Debt Collection Practice
5 Act ("RFDCPA"), Civil Code § 1788 et seq., including, but not limited to, the violations of §§
6 1788 et seq., 1788.11, and 1788.17.

7 75. Ocwen violated California Civil Code § 1788.11 by communicating by telephone,
8 with the debtor with such frequency as to be unreasonable and to constitute a harassment under
9 the circumstances.

10 76. Ocwen violated California Civil Code § 1788.17 by demanding payments in
11 excess of those required or allowed by the modification agreement, rejecting Ms. Sandigo's
12 payments, assessing fees without justification, refusing to accept Ms. Sandigo's payments,
13 refusing to provide a coherent reason for its contention that Ms. Sandigo was in default, failing
14 to respond substantively to disputes submitted by Ms. Sandigo, and unlawfully threatening
15 foreclosure, and initiating an illegal foreclosure.

16 77. Ocwen violated Civil Code § 1788.13(e) by representing to Plaintiff that her loan
17 could be increased by fees and charges, and including property inspection fees when no such
18 fees and charges could be assessed.

19 78. Ocwen violated Civil Code § 1788.17 (via incorporation of 15 U.S.C. § 1692e)
20 by making false, deceptive, and misleading representations in an attempt to collect a debt, and
21 taking action it could not legally take.

22 79. Ocwen violated Civil Code § 1788.17 (via incorporation of 15 U.S.C. § 1692c)
23 by failing to cease communicating.

24 80. Ocwen violated Civil Code § 1788.17 (via incorporation of 15 U.S.C. § 1692d),
25 by engaging in conduct which had the natural consequence to harass, oppress, and abuse Ms.
26 Sandigo.

27 81. Ocwen violated Civil Code § 1788.17 (via incorporation of 15 U.S.C.
28 §1692e(2)(A)) which prohibits misrepresentation of the character, amount, or legal status of the

1 debt.

2 82. Ocwen violated Civil Code § 1788.17 (via incorporation of 15 U.S.C. §1692f),
3 which prohibits any unfair or unconscionable means to collect or attempt to collect any debt.

4 83. Ocwen violated Civil Code § 1788.17 (via incorporation of 15 U.S.C.
5 §1692f(1)), which prohibits attempts to collect any amount unless such amount is expressly
6 authorized by the agreement creating the debt or permitted by law.

7 84. Ocwen's violations were willful and knowing.

8 85. As a result of these violations, Ms. Sandigo has suffered damages, including
9 emotional distress, in an amount to be proven at trial.

10 86. Plaintiff is entitled to statutory damages, actual damages, reasonable attorney's
11 fees, and costs under Cal. Civil Code §§ 1788.17 and 1788.30, and 15 U.S.C. § 1692k(a)(2)(A).

12 87. Plaintiff is entitled to treble statutory damages.

13 **THIRD CAUSE OF ACTION**

14 **Real Estate Settlement Procedures Act 12 U.S. C. § 2605**

15 **Against Ocwen**

16 88. Plaintiff incorporates and realleges all of the preceding allegations as though fully
17 set forth here.

18 89. Ocwen is a servicer of a federally related mortgage loan and therefore is subject
19 to the RESPA pursuant to 12 U.S.C. § 2605(e) and Regulation X, 12 C.F.R. Part 1024.

20 90. As alleged above, Ms. Sandigo submitted letters to Ocwen dated July 26, 2016,
21 November 2, 2016, and December 26, 2016. Each of the letters met all requirements for a
22 "Notice of Error" under RESPA. The letters included, or otherwise enabled Ocwen to identify
23 the Plaintiff's name and account, and included a statement of the reasons for the Plaintiff's belief
24 that the account was in error.

25 91. Pursuant to 12 U.S.C. § 2605(e)(1)(A) and 12 C.F.R. § 1024.35(d), Ocwen was
26 required to acknowledge receipt of the dispute letters within 5 days (excluding legal public
27 holidays, Saturdays, and Sundays).

28 92. Pursuant to 12 U.S.C. § 2605e(2), and 12 C.F.R. § 1024.35(e), within 30 days

(excluding legal public holidays, Saturdays, and Sundays) after the receipt of the letters, Ocwen was required to:

- make appropriate corrections in Plaintiff's account, including any late charges or penalties, and
- transmit to Plaintiff a written notification of such correction, which included the name and telephone number of a representative of Ocwen who can provide assistance.

93. Alternatively, if Ocwen determined to not make corrections to Plaintiff's account, it was required to:

- conduct a reasonable investigation;
- provide Plaintiff with a written explanation or clarification that included a statement of the reasons for which Ocwen believed that no error occurred; and
- provide the name and telephone number of an individual employed by, or the office or department of Ocwen who could provide assistance to the borrower.

94. Ocwen violated these provisions in multiple ways.

95. With respect to the July 26, 2016, November 2, 2016 and December 26, 2016 letters, Ocwen failed to promptly make appropriate corrections to Ms. Sandigo's account, or explain the reasons why Ocwen believed that no error occurred. Ms. Sandigo is informed and believes that Ocwen also failed to conduct a reasonable investigation.

96. With respect to the December 26, 2016 letter, Ocwen failed to acknowledge the letter within 5 business days, or make any response whatsoever.

97. Ocwen's many and repeated violations of RESPA constitute a "pattern and practice" of violation of the Act. Pursuant to 12 U.S.C. §2605(f)(1), Ocwen is liable for \$2,000.00.

98. Plaintiff suffered actual damages as a result of Ocwen's willful violations of RESPA, including but not limited to emotional distress damages.

99. Ocwen is liable for a trebling of RESPA statutory damages.

FOURTH CAUSE OF ACTION

Conversion

Against Ocwen and U.S. Bank

100. Plaintiff incorporates and realleges all of the preceding allegations as though fully set forth here.

101. Ms. Sandigo made payments of \$1,597.56 from July 2016 to November 2016 because Ocwen demanded such payment amount, and refused to accept a lesser amount.

102. The \$1,597.56 payment unlawfully includes approximately \$182.35 in escrow charges related to property taxes, which are illegal because Ocwen did not pay Ms. Sandigo's property taxes. This totals \$911.75 that Ocwen received and deposited, and continues to wrongfully maintain possession and control over.

103. Ms. Sandigo had a possessory and ownership interest in the monies she paid to Ocwen (under the false representations and coercive statements that she had to pay Ocwen a higher monthly payment than she actually owed and was legally required to pay).

104. Through its false representations and coercive statements to Ms. Sandigo (that she was required to pay a higher amount than she truly was required) Ocwen intentionally took a possessory interest in the money Ms. Sandigo paid Ocwen, and refused to give her money back, depriving Ms. Sandigo of her personal property.

105. Ms. Sandigo suffered monetary, out-of-pocket damages, physical harm, and emotional distress and mental anguish as a result of Ocwen's actions. Ocwen's conduct was a substantial factor in causing this harm to Ms. Sandigo.

106. Ocwen acted with oppression, and/or malice, thereby entitling Ms. Sandigo to punitive damages in an amount to be determined at trial. Ocwen acted in a despicable manner and acted with a conscious disregard to the rights of Ms. Sandigo.

FIFTH CAUSE OF ACTION

Consumer Credit Reporting Agencies Act, Civil Code § 1785.1 et seq.

Against Ocwen

107. Plaintiff incorporates and realleges all of the preceding allegations as though fully

1 set forth here.

2 108. Ocwen, either directly or through their agents, in the ordinary course of business,
3 regularly and on a routine basis furnishes information to one or more “consumer credit reporting
4 agencies”, as that term is defined by Cal. Civil Code section § 1785.3(d).

5 109. California’s Civil Code § 1785.25(a) states that a “person shall not furnish
6 information on a specific transaction or experience to any consumer credit reporting agency if
7 the person knows or should know the information is incomplete or inaccurate.”

8 110. Ocwen’s acts and omissions violated Civil Code § 1785.25(a) including, but not
9 limited to the below.

10 111. Ocwen falsely reported to Equifax that Plaintiff owed “amounts past due” in 2015
11 and 2016, when she was current on her mortgage. For example, in June and July 2016, Ocwen
12 falsely reported an amount past due of \$6,111.00. Ocwen knew or should have known this
13 information was inaccurate or incomplete.

14 112. Ocwen failed to report complete and accurate information to the national credit
15 reporting agencies, including that Ms. Sandigo disputed the account, when it knew Ms. Sandigo
16 disputed the account on numerous occasions in writing and in telephone conversations with
17 Ocwen representatives.

18 113. Ms. Sandigo is informed and believes that Ocwen reported inaccurate and/or
19 incomplete information to Equifax on a monthly basis.

20 114. Numerous times (through many telephone conversations and dispute letters),
21 Ocwen was informed that its accounting with respect to Plaintiff’s loan was erroneous and thus
22 knew, or should have known that the information it was reporting about Ms. Sandigo to the
23 national credit reporting agencies was inaccurate and incomplete. Such conduct was willful and
24 malicious, and subject to punitive damages (to be determined by a trier of fact), pursuant to Cal.
25 Civil Code §1785.31.

26 115. Based on these violations of Civil Code § 1785.25(a), Plaintiff is entitled to the
27 remedies afforded by Civil Code § 1785.31, including actual damages, pain and suffering,
28 punitive damages, injunctive relief, and attorney’s fees.

116. Ocwen is liable for a trebling of punitive damages.

SIXTH CAUSE OF ACTION

**Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*)
Against All Defendants**

117. Plaintiff incorporates and realleges all of the preceding allegations as though fully set forth here.

118. Business & Professions Code §17200, et seq., the “Unfair Competition Law” (“UCL”) defines unfair competition to include any unlawful, unfair, or fraudulent business act or practice. The UCL authorizes this Court to issue whatever orders or judgments may be necessary to prevent such practices, or to “restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.” *Id.* § 17203.

119. Defendants committed “unlawful” business acts or practices by, among other things, recording a Notice of Default even though Ms. Sandigo was current on her payments, in violation of the California Homeowner Bill of Rights, Cal. Civil Code § 2924.11(c)(1); filing inaccurate and incomplete foreclosure documents, in violation of the Homeowner Bill of Rights, Cal. Civil Code § 2924.17; failing to appropriately and timely respond to disputes submitted under RESPA; engaging in unlawful collection practices in violation of the Rosenthal Act; converting Ms. Sandigo’s funds by insisting on excessive payments; and furnishing inaccurate and incomplete information on her credit reports in violation of California Civil Code § 1785.25(a) as alleged in this Complaint.

120. Ocwen committed “unfair” business acts and practices, including but not limited to, demanding and accepting payments in excess of those required, assessing various fees without justification, refusing to accept Ms. Sandigo’s payments, failing to respond substantively to disputes submitted by Ms. Sandigo, failing to even respond to some of the disputes, and ultimately threatening and commencing foreclosure proceedings.

121. U. S. Bank, through its agent and servicer Ocwen, committed unlawful and unfair business practices by recording a Notice of Default even though Ms. Sandigo was current on her

1 payments, in violation of the California Homeowner Bill of Rights, Cal. Civil Code §
 2 2924.11(c)(1); filing inaccurate and incomplete foreclosure documents, in violation of the
 3 Homeowner Bill of Rights, Cal. Civil Code § 2924.17, demanding and accepting payments in
 4 excess of those required, assessing various fees without justification, refusing to accept Ms.
 5 Sandigo's payments, and ultimately threatening and commencing foreclosure proceedings.

6 122. The Court's intervention is necessary to halt and remedy Defendants' unlawful
 7 and unfair acts and practices.

8 123. Ms. Sandigo is entitled to restitution, declaratory relief, and injunctive relief
 9 pursuant to Bus. and Prof. Code § 17203.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Ms. Sandigo prays for judgment against Defendants as follows:

12 **Against Ocwen**

13 1. For equitable and injunctive relief, including a) an Order enjoining defendants
 14 from proceeding with foreclosure, b) an Order requiring rescission of the Notice of Default and
 15 any Notice of Trustee's Sale subsequently filed, c) an accounting, d) an Order requiring
 16 Defendants to revoke all demands for property tax based escrow payments and other fees and
 17 charges arising out of defendants unjustified demand for such escrow payments, e) an Order
 18 requiring Ocwen to correct Plaintiff's credit report, and f) further relief as the Court may deem
 19 just;

20 2. For restitution of excess payments;

21 3. For actual damages, including damages for emotional distress under all applicable
 22 law, including 15 U.S.C. § 1692k(a)(1); Cal. Civil Code; 12 U.S.C. § 2605(f)(1)(A); Cal. Civil
 23 Code § 1785.31(a)(2)(A), and Cal. Civil Code § 1788.30(a);

24 4. For statutory, and punitive damages pursuant to all applicable law, including Cal.
 25 Civil Code § 3294 *et seq.*, 15 U.S.C. § 1692k(a)(2)(A), 12 U.S.C. § 2605(f)(1)(B), Cal. Civil
 26 Code § 1785.31(a)(2)(B) and Cal. Civil Code § 1788.30(b);

27 5. For an award of punitive damages to deter further unlawful conduct pursuant to
 28 Cal. Civil Code section 1785.31 of up to \$5,000 per violation;

6. For an award of punitive damages, pursuant to Cal. Civil Code section 3294;
7. \$911.75 in converted funds, with interest from the time of conversion;
8. For an award of attorney's fees, costs and expenses;
9. Fair compensation for the time and money properly expended in pursuit of the converted funds;
10. Treble damages pursuant to Civil Code section §3345;
11. Pre-judgment and post judgment interest at the legal rate; and
12. For such other and further relief as the court may deem proper.

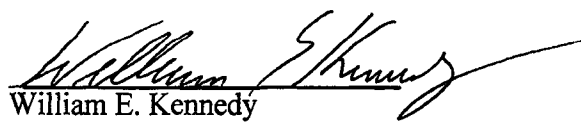
Against U.S. Bank

1. For equitable and injunctive relief, including a) an Order enjoining defendants from proceeding with foreclosure, b) an Order requiring rescission of the Notice of Default and any Notice of Trustee's Sale subsequently filed c) an accounting, d) an Order requiring Defendants' to revoke all demands for property tax based escrow payments and other fees and charges arising out of defendants unjustified demand for such escrow payments, and e) further relief as the Court may deem just;
2. For restitution of excess payments;
3. For an award of attorney's fees, costs and expenses;
4. Pre-judgment and post judgment interest at the legal rate;
5. For an award of punitive damages, pursuant to Cal. Civil Code section 3294;
6. Treble damages pursuant to Civil Code section §3345; and
7. For such other and further relief as the court may deem proper.

DATED: April 11, 2017

CONSUMER LAW OFFICE OF WILLIAM E.
KENNEDY
DUPRE LAW FIRM, P.C.

By


William E. Kennedy
Attorneys for Phyllis Sandigo


DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all the claims asserted in this Complaint so triable.

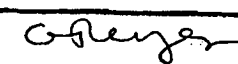
DATED: April 11, 2017

CONSUMER LAW OFFICE OF WILLIAM E.
KENNEDY
DUPRE LAW FIRM, P.C.

By


William E. Kennedy
Attorneys for Phyllis Sandigo

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William E. Kennedy SBN 158214 Consumer Law Office of William E. Kennedy 2797 Park Avenue, Suite 201 Santa Clara, CA 95050 TELEPHONE NO.: (408) 241-1000 FAX NO.: (408) 241-1500 ATTORNEY FOR (Name): Plaintiff Phyllis Sandigo		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 5px;">FILED</div> APR 11 2017 Clerk of the Court Superior Court of CA County of Santa Clara BY  DEPUTY <div style="font-size: 1.5em; font-weight: bold; margin-top: 10px;">17CV308431</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:		
CASE NAME:		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">17CV308431</div> JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input checked="" type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 6 (HBOR, Rosenthal, RESPA, Conversion, CCRAA, B&P 17200)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 11, 2017
 William E. Kennedy

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller
Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: 17CV308431

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courts.ca.gov/forms.htm and www.courts.ca.gov/rules.htm
- Local Rules and Forms: www.scscourt.org

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: William Elfving Department: 3

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 8/01/2017 Time: 2:15pm in Department: 3

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.scscourt.org or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

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Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784